Docket No 09-843

SUPREME COURT, U.S.
APR 16 2010

THE SUPREME COURT OF THE UNITED STATES

THANH VONG HOAI, et al ,
Petitioners

v.

SUPERIOR COURT OF THE DISTRICT
OF COLUMBIA, et al
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR RECONSIDERATION

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PETITION FOR RECONSIDERATION

I MATTER NOT PREVIOUSLY PRESENTED CONCERNING THE PMPA

In the petition for certiorari petitioners did not present the important question under the Petroleum Marketing Practices Act (PMPA) (15 U S C §§ 2801 *et seq*) that is presented by their case as it interacts with the declaratory judgment that was violated by the defendants in their case This embraced by their Questions Presented 10, 12, and 13 but was not presented It is significant, and petitioners maintain, important, for this Court to address this question in light of its recent decision on the PMPA in *Mac's Shell Service, Inc v Shell Oil Products,* LLC (slip opinion March 2, 2010) There the Court rendered an important ruling on the question of constructive termination under the PMPA This case presents an equally important question under the PMPA on the question of damages when there is clearly an illegal termination under the PMPA

This important question under the PMPA here ties directly to the question presented of the violation of a declaratory judgment, which in this case was a decision by the local municipal court, the Superior Court of the District of Columbia, that the petitioners should split their claims between their state common law claims for the damage caused by the illegal takeover of the service station franchise in question and its illegal termination and the federal claim for the illegal termination under the PMPA With this declaration the Superior Court

effectively mandated these petitioners to take their federal claims, split them out from their federal claims and pursue the federal claims in the federal courts, which the petitioners did These facts were alleged by the petitioners in their complaint below in this case And since their case was dismissed under Rule 12(b)(6), must be taken as true See Appx , Vol I, pp 35-36 This declaratory relief was noted by the United States Court of Appeals for the District of Columbia Circuit in *Hoai v Sun Refining and Marketing Company, Inc* , 866 F 2d 1515 (D C Cir 1989) [1]

This declaration allowing the petitioners to split their claims between their state and federal claims, and particularly the federal PMPA claim was also taken notice of and petitioners ask this Court to take judicial notice, was then completely violated by the respondents when Hoai did win his PM)PA case and the petitioners returned

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[1] Finally, it appears that the Superior Court judge himself wished to simplify the case in his court by separating out the federal claims In a scheduling conference on September 16, 1988, the judge suggested that the issues arising out of the dispute between Hoai and Vo could be severed out of this case and tried here preserving all the other issues that make this case more complicated about the behavior of Sun Oil and the franchise agreements and whether or not the franchise could be transferred in violation of the Petroleum Marketing Act Transcript of Scheduling Conference at 24, Vo v Hoai, Civ No 7075-86 (D C Sup Ct Sept 16, 1988), see also id at 27 ("Speaking only to the question of whether we can simplify the Superior Court litigation and expedite part of this case at least without depriving you [Hoai's counsel] in any way of your right to litigate the rest of it, perhaps after the Federal Court case runs its course, is there any way you can think of to do that?") Certainly, the Superior Court did not appear to view the exercise of federal jurisdiction as an attack on its sovereignty or as lacking in "comity "

to the Superior Court of the District to try the rest of their claims, the common law ones as it had been declared that they could do App 36

This violation of the declaratory relief thus accorded the petitioner Hoai relates to the material not previously presented concerning damages under the PMPA in that the judge below in the petitioner Hoai's PMPA case, when it was remanded after the interlocutory reversal just noted ruled that the common law, non-federal claims of the petitioner Hoai could be pursued only if brought separately and the damages that they entailed, would have to be pursued in those separate tort claims See decision of Honorable Louis F Oberdorfter in *Hoai, supra*, 1991 U S Dist LEXIS 5977 (D D C May 1, 1991) This decision made it imperative for the petitioner Hoai that he be allowed to pursue his tort damages claim, common law claims back in the Superior Court of the District of Columbia where they were pending, having been stayed along with the claims of the other two petitioners, at the time

II THE PMPA UNDERMINED BY THE CIVIL RIGHTS VIOLATIONS

The PMPA was intended to balance the disparity between the enormous bargaining power of the large oil companies and their dealers and to prevent "contracts of adhesion" and wrongful terminations Here it allowed a remedy, albeit a limited one, for the wrongful termination, but was then, by the civil rights violations and the violation of the right to access to the courts

complained of in this case to be sued as a sword to enable Sun to knowingly participate in the tortuous acts of the aspiring ethnic mafia involved without incurring any responsibility for those greater wrongs with their far greater damages Thus, the declaratory relief of being able to split the claims between federal statutory claims and common law claims with the federal claims to be tried first with the common law claims in the Superior Court stayed, and the petitioners promised that they might return to the Superior Court after resolution of the federal claims in the federal court and try the common law claims, when violated by the respondents and defendants in this case, completely frustrated the language and intent of the PMPA and allowed Sun to use it as a sword rather than the shield it was intended to be

This misuse of the PMPA was a direct result of the civil rights violations of the respondents and defendants below in deferring to the status of Sun and acting against the rights of a Vietnamese in a reversal of the famous dictum of Sir Henry Maine in "The Ancient Law " It was in effect, a movement away from the Rule of Law to a deference to status It was thus a reversal of the intended effect of the civil rights laws and a betrayal of them Courts and judges should not be free to declare a rule for the case and then betray it to help out an entity because of deference to it that is unwarranted Here that also betrays the intent of the PMPA

Every immigrant ethnic group is plagued with those that wish to emulate the mafia and prey upon their own

Here, the defendants below and respondents first assisted the aspiring mafia, and then absolutely refused and still refused, to allow the petitioners to right that wrong within the municipal court system Service station franchises are frequently obtained by immigrant entrepreneurs seeking success in America It is important that the judges of the municipal court system of the capital of the nation and that court system be put on notice that this wrong will be rectified We promote the Rule of Law as a pillar of our foreign policy It is important to see that it prevails in the nation's capital in this important area of industry Municipal judges, particularly those in the capital of the country, need to be conversant with and not pervert the effect of significant federal statutes such as the PMPA and not deprive litigants of their right to be properly and lawfully treated under those statutes Here the ignoring of the laws governing service station franchises created the events that led to the denial of access to the courts in the first instance

It would be a great wrong to allow the municipal courts involved to compound that error and not observe the civil rights of the petitioners We would suggest that straightening out these matters with regard to the PMPA, which we now present for the first time, is of sufficient importance to justify the attention of this Court to the civil rights violations that are presented by this case

III NEW MATTER ON THE DENIAL OF ACCESS TO THE COURTS

Another matter here presented for the first time relates directly to this failure to observe and enforce the civil rights of the plaintiffs/petitioners in that it makes evident the determination of the defendant/respondent courts and judges to not grant the petitioners any actual meaningful and adequate access to the municipal courts of the District of Columbia On July 31, 2007, after this case had been proceeding for some time in the federal courts the petitioners moved in the Superior Court for a status conference in an effort to persuade the Superior Court to actually do something with their defenses and motions and claims that at that point had been pending there, some of them since 1986 See Appendix III, p 118 ff This motion was never opposed As with every motion, defense and claim of the petitioners, this motion too has been ignored Thus the respondents and defendants below have made inescapably clear that they mean to deny the petitioners any access to the courts of the District of Columbia and hope, as the respondent Dixon put it, that the petitioners will eventually "go away," by either dying or formally giving up rather than continue to pursue their right f access to the courts We would respectfully suggest that this resolute determination to deny the rights of the petitioners makes this a case which should be considered by this Court

Respectfully submitted,

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CERTIFICATE OF GOOD FAITH

I hereby certify that I am filing this petition, as entering counsel in good faith and with no intention of delaying proceedings

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